

**Letter of Findings: 01-20181207
Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual did not abandon her Indiana domicile despite international travel for her job. Individual had an Indiana driver's license, co-owned an Indiana home and took the homestead deduction, and her spouse lived in Indiana for the year at issue.

ISSUES

I. Income Tax—Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-3-3; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration—Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayer protests the imposition of a penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013 and thus owed Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of a penalty and interest. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Domicile.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, "a resident" includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2013. Therefore, in order to be considered a resident of Indiana during 2013, Taxpayer must have been domiciled here.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413. **Establishing a new residence or domicile terminates the former domicile.** A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96. *Id.* at 1317. (Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon his domicile in Indiana.

The Department, in a letter dated August 21, 2017, stated that Taxpayer had to "file an Indiana Individual Income Tax Return Form" for 2013. The Department's letter also stated Taxpayer "established [her] domicile in Indiana . . . by taking the Homestead Exemption deduction on [her] property taxes" at an Indiana home. The applicable law

for homestead is found at IC § 6-1.1-12-37(a)(2), which states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) **that is located in Indiana;**

(B) **that:**

(i) **the individual owns;**

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; **and**

(C) **that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.**

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

(Emphasis added).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh*, at 596.

Taxpayer's representative states the following in correspondence: (1) Taxpayer "co-owns" the Indiana property with her husband; (2) Taxpayer's employer was an airline and that she "resided in London from 1997 until her retirement in 2015[.];" (3) Taxpayer purchased a home in another state in 2014 and currently resides there; and (4) Taxpayer's husband "remains in his home" in Indiana. Taxpayer argues that her employer was based in the United Kingdom, that she "held a United Kingdom, Permanent Resident Permit," and that she resided at her most recent address in England from "2011 to November 2015." Taxpayer further states that she "did not commute from Indiana to England to work," that she "paid United Kingdom taxes every year of her residence" and that she paid federal income tax in the United States. Taxpayer states that her "husband lived with her in the U.K. for a short time until 2007" when he returned to Indiana "due to health concerns," but that she "continue[d] to live and work, full time, in England." Taxpayer, for 2013, filed a separate federal return from her husband. Taxpayer's representative also provided various documents in support of Taxpayer's argument—e.g. copies of federal tax returns, pay statements from her employer, etc.

Even if Taxpayer did not "spend[] more than one hundred eighty-three (183) days of the taxable year within" Indiana, there is still the question of *domicile*. According to Taxpayer, she moved to Indiana as an adult. She began working for an airline "in 1990, flying out of Chicago, living in Indiana." In the late 1990s she met her husband. Taxpayer states that her husband was a resident of England and that "they lived in England almost full time for 10 years, visiting [Indiana] during the summer months" until her husband's medical issues began in 2007. According to Taxpayer, her husband then returned to Indiana for medical treatment. As noted, Taxpayer took the homestead exemption for the Indiana home for 2013. Taxpayer also had an Indiana driver's license, with Taxpayer stating that "[t]o fly domestically within the U.S., you need a U.S. driver's license, a U.K. driver's license cannot be used as ID within the U.S.A." Taxpayer's husband continued to live in Indiana, including for the year at issue—2013. On Taxpayer's 2013 federal form 2555 ("Foreign Earned Income"), at line 15, the form states:

[d] Did you maintain a home in the United States while living abroad?

Taxpayer checked the box for "Yes" and then listed the Indiana home's address. Additionally, after Taxpayer retired she "move[d] back to the US, closer to her family." For the year 2014, Taxpayer filed an Indiana PNR return.

Taxpayer in the 1990s lived in Indiana and thus had an Indiana domicile. For 2013 Taxpayer's domicile remained Indiana: Taxpayer owned Indiana property; Taxpayer took the homestead exemption for that Indiana property; Taxpayer listed the Indiana address on federal form 2555; Taxpayer maintained an Indiana driver's license; Taxpayer received mail at the Indiana address, including banking and investment records; Taxpayer's spouse

lived in Indiana; and when Taxpayer retired, she initially returned to Indiana, filing an Indiana PNR return. For the foregoing reasons, the Department finds that Taxpayer has not established for the year at issue that she abandoned her Indiana domicile.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty and Interest.

DISCUSSION

Taxpayer protests the imposition of a penalty. IC § 6-8.1-10-3 provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Taxpayer did not develop any specific argument regarding the penalty, although Taxpayer states that she did not believe she had a filing requirement. Taxpayer has not met her burden of proof found in IC § 6-8.1-5-1(c) regarding the penalty. Interest, per IC § 6-8.1-10-1(e), cannot be waived.

FINDING

Taxpayer's protest of the imposition of penalty and interest is denied.

SUMMARY

Taxpayer's protest of Issue I is denied; Taxpayer's protest of Issue II is also denied.

August 31, 2018

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An [html](#) version of this document.